



## **CULPEPER COUNTY OFFICE OF PLANNING AND ZONING** **PERFORMANCE GUARANTY POLICY**

WHEREAS, the Culpeper County Office of Planning and Zoning (Department of Development) is responsible for obtaining performance guarantees for erosion and sediment control and for public improvements such as roads within newly created subdivisions; and

WHEREAS, it is critical to public safety that public improvements be completed in a timely manner; and

WHEREAS, it is also critical to the environment that erosion and sedimentation control be strictly enforced; and

WHEREAS, the Office of Planning and Zoning wishes to streamline the requirements for performance guarantees and to insure that they can be easily accessed when necessary;

NOW THEREFORE BE IT RESOLVED, that the following Policy and the attached forms shall be implemented and shall govern the acceptance of all future performance guarantees, effective January 1, 2009.

### **POLICY**

1. All performance guarantees shall be secured with an Irrevocable Letter of Credit which adheres to the format set forth in the attached documents, or with cash or check.
2. All checks/cash provided as security shall be deposited in an account established solely for the subject project. Checks must clear prior to considering the performance guaranty to be in place. Once all work is completed to the satisfaction of the Office of Planning and Zoning, letters of credit / cash will be returned in the form of a check with all interest accrued.
3. In order to establish the amount of a performance guaranty, the developer shall provide a current, written estimate broken down by unit price. If the Office of Planning and Zoning finds the estimate to be satisfactory, inflation shall then be factored in based upon the performance date established in the Agreement. Additionally a contingency of shall be added as follows: Projects with a performance date up to 1 year in the future shall add 10%; projects with performance dates 1 to 2 years in the future shall add 25%; and projects with performance dates more than 2 years in the

future shall add 50%. The final amount required as security shall be communicated to the developer, who must then bond the project for that amount.

4. If at any time during project construction the Office of Planning and Zoning determines that the Performance Agreement has been breached, or that the performance guaranty is inadequate, the County may issue a Stop Work Order or may withhold building permits in addition to drawing on the performance guaranty.
5. In any instance where a property subject to a performance guaranty is transferred, sold, or otherwise changes hands, the Zoning Administrator must be promptly notified and new performance guaranty documents may be required.
6. All documentation related to performance guarantees, except for erosion control for individual single family dwellings, shall be submitted to the Office of Planning and Zoning. If approved by that office, documents shall be approved as to form by the County Attorney or his designee and then submitted to the Finance Department. Once reviewed and approved, the Finance Department shall submit the security (Letter of Credit, cash/check) to the Treasurer's Office and return the Performance Agreement to the Office of Planning and Zoning.
7. Any existing performance guaranty in place prior to August 1, 2008 which expires or otherwise needs to be replaced or renewed for any reason shall be subject to this policy
8. The following forms (attached) are hereby adopted for use:
  - A. Agreement/Performance Guaranty
  - B. Form for Irrevocable Letter of Credit
  - C. Erosion and Sediment Control Agreement
  - D. Irrevocable Letter of Credit Form for Erosion and Sediment Control
  - E. Agreement – Single Family Dwelling Erosion and Sediment Control